

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

GARRET SITTS, et al., Plaintiffs, v. DAIRY FARMERS OF AMERICA, INC. and DAIRY MARKETING SERVICES, LLC, Defendants.	Civil Action No. 2:16-cv-00287-cr
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DEFENDANTS DAIRY FARMERS OF AMERICA, INC. AND
DAIRY MARKETING SERVICES, LLC’S
REVISED NOTICE OF DEPOSITION DESIGNATIONS FOR TRIAL

On June 30, 2020, pursuant to the Court’s pretrial schedule, defendants Dairy Farmers of America, Inc. and Dairy Marketing Services, LLC (collectively, “DFA”) submitted their deposition designations to be introduced into evidence at trial, together with objections and counter-designations, for the Court’s consideration and ruling. Defs.’ Notice of Dep. Designations for Trial, ECF No. 266. DFA designated deposition testimony of five witnesses, attached as Exhibits 1-5 to that filing. *See* ECF Nos. 266-1, 266-2, 266-3, 266-4, 266-5.

Following this Court’s ruling on the parties’ motions *in limine*, the Court ordered the parties to identify any remaining contested deposition designations by September 10, 2020. July 21, 2020 Hr’g Tr. 178:22-179:4, ECF No. 282.

Because the Court’s rulings during the July 21, 2020 hearing regarding pretrial motions *in limine* did not affect DFA’s affirmative designations—which are limited in scope and were not the subject of any motions *in limine*, other than plaintiffs’ Motion *in Limine* to Exclude Deposition Designations of Midland Farms, Inc. and Cloverland Farms Dairy, ECF No. 239, which the Court

provisionally denied—DFA respectfully directs the Court to its previously filed deposition designations at ECF No. 266. *See* July 21, 2020 Hr’g Tr. 165:16-19.

Moreover, plaintiffs have not informed DFA of any intention to revise their objections or counter-designations to DFA’s affirmatively designated testimony, despite DFA’s request for confirmation on this point—and notwithstanding the Court’s denial of plaintiffs’ motion to exclude the testimony of the Midland and Cloverland witnesses (upon which many of plaintiffs’ objections to that aforementioned testimony rests). *See* Sept. 8, 2020 Email From Sarah Ray to Dana Zakarian, attached as Exhibit A. DFA thus requests the Court’s consideration and ruling on these objections.

DFA reserves the right to introduce additional testimony not designated in ECF No. 266 for the purposes of impeachment and/or rebuttal. DFA also reserves the right to further amend its deposition designations, including as a result of the Court’s ruling on any pending motion, its rulings during trial (including pursuant to Federal Rule of Civil Procedure 50), and/or its resolution of any other dispute that bears on the legal claims in this case. Furthermore, in response to the deposition designations submitted by plaintiffs, DFA has counter-designated testimony of those witnesses for completeness and fairness pursuant to Federal Rule of Civil Procedure 32(a)(6) and Local Rule 26(d), as set forth in ECF No. 315. To the extent that the Court determines that any of DFA’s proposed counter-designations in ECF No. 315 do not qualify as counter-designations pursuant to Federal Rule of Civil Procedure 32(a)(6) and Local Rule 26(d), DFA reserves the right to introduce these designations affirmatively in DFA’s case-in-chief.

DFA also seeks to bring another matter to the Court’s attention. During an August 25, 2020 meet and confer, DFA informed plaintiffs that it would send them its revised objections to plaintiffs’ deposition designations, to the extent that any existed, in advance of the Court’s

September 10, 2020 deadline, so plaintiffs could reflect DFA's revisions in their filing to the Court. Plaintiffs did not await DFA's full revisions and instead filed their updated designations with the Court on September 3, 2020, a week before the filing date. DFA corresponded with plaintiffs on September 8, 2020, specifically outlining its revised objections to the designations of three of plaintiffs' witnesses. DFA requested that plaintiffs update their September 3, 2020 filing accordingly. *See* Exhibit A, Sept. 8, 2020 Email from Sarah Ray to Dana Zakarian. As of the time of this filing, plaintiffs have not responded to DFA's request to refile updated designations with the Court to reflect DFA's revised objections. DFA respectfully requests that the Court direct plaintiffs to refile their deposition designations to reflect DFA's proposed revisions.

Dated: September 10, 2020

Respectfully submitted,

/s/ Alfred C. Pfeiffer Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2020, I electronically filed with the Clerk of Court the foregoing document using the CM/ECF system. The CM/ECF system will provide service of such filing via Notice of Electronic Filing (NEF) to the following NEF parties:

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Dated: September 10, 2020

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